

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:)	No. 27329-6-III
)	
JAMIE R. BALDWIN,)	
)	
Appellant,)	
)	Division Three
and)	
)	
SHEVONNE C. BALDWIN,)	
)	
Respondent.)	UNPUBLISHED OPINION

Korsmo, J. — Jamie Baldwin appeals the trial court’s revised parenting plan, contending that several of the restrictions placed on him were not appropriate. However, they are supported by the record and most of the challenged restrictions were consistent with the recommendations by his own expert. The trial court did not abuse its considerable discretion in this area. We affirm.

FACTS

Jamie and Shevonne Baldwin were married July 4, 1998, and legally separated

December 6, 2005. The separation was later converted to a dissolution action and the matter proceeded to trial in August, 2007. A decree of dissolution was filed September 10, 2007, that included a parenting plan for the couple's two children, a seven-year-old daughter and a four-year-old son. The initial parenting plan placed several restrictions on Mr. Baldwin and included hair follicle testing every 60 days, supervised weekly visitation with his children, and a requirement that he comply with the recommendations of his substance abuse and sexual deviancy treatment provider, Dr. Douglas Allmon.

There was no appeal from the dissolution decree. Instead, just over three months after the judgment was entered, Mr. Baldwin petitioned to modify the parenting plan on the basis that he had fully complied with the conditions of Dr. Allmon's treatment regime. He requested a "phase-in" period of transition from supervised to unsupervised visitation with the children. Dr. Allmon made eight recommendations for the phased transition. The court, at the request of Ms. Baldwin, directed that Mr. Baldwin undergo a psychosexual evaluation from Dr. Natalie Brown. Dr. Brown recommended a phased-in reunification process similar to Dr. Allmon's proposal. She also recommended other specific restrictions on Mr. Baldwin's behavior and continued abstinence from drugs and pornography, along with twice-a-year follicle testing at the request of Ms. Baldwin.

The trial court entered a revised parenting plan that largely incorporated the

recommendations of the two doctors. Mr. Baldwin promptly moved for reconsideration, challenging several of the provisions of the revised plan as well as the impartiality of the trial judge. The motions were denied. Mr. Baldwin then *pro se* appealed to this court.

ANALYSIS

Parenting Plan. This court reviews a parenting plan for abuse of discretion. *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993); *In re Marriage of Jensen-Branch*, 78 Wn. App. 482, 490, 899 P.2d 803 (1995). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). A court acts on untenable grounds when its factual findings are not supported by the record; it acts for untenable reasons if it uses an incorrect standard of law or the facts do not meet the requirements of the standard of law. *State v. Rundquist*, 79 Wn. App. 786, 793, 905 P.2d 922 (1995), *review denied*, 129 Wn.2d 1003 (1996).

A parent's involvement with his children may be restricted when necessary to prevent an adverse impact on them. Substance abuse is one basis for imposing restrictions on a parent. RCW 26.09.191(3)(c). Courts also may impose other restrictions as necessary to further the best interests of the child. RCW 26.09.191(3)(g). The trial court is not required to follow the recommendations of an expert witness; it must

make its own assessment of the child's best interests. *In re Marriage of Swanson*, 88 Wn. App. 128, 138, 944 P.2d 6 (1997), *review denied*, 134 Wn.2d 1004 (1998).

Mr. Baldwin challenges various conditions imposed under paragraphs 3.1 and 3.13 of the revised parenting plan. Those paragraphs establish and implement the phased-in transition plan. He primarily challenges provisions that allow his ex-wife to (1) know in advance the names of others who will have contact with the children while they are visiting their father; (2) require random hair follicle testing; (3) conduct random checks of his house for pornography or sexual deviancy; and (4) have weekly informal examination of the children for evidence of sexual abuse. She also has the power, if evidence of sexual abuse arises, to order a polygraph test. She also can terminate visitation and immediately report to the court in the event that Mr. Baldwin violates the provisions of the plan. Mr. Baldwin complains that this structure gives his ex-wife too much control over his life.

Ms. Baldwin, however, is in the best position to observe potential violations and is also motivated to act to protect her children. It makes sense for the trial court to give her those responsibilities. She also bears the financial costs of checking the computers and house for pornography, and she will have to pay one-half the cost of the hair follicle testing. Accordingly, she has financial incentives to not abuse her position. The trial

court did not abuse its discretion by assigning these tasks to Ms. Baldwin.

The conditions also were quite reasonable under the circumstances of this case. The continued hair follicle testing was part of the original parenting plan put in place while Mr. Baldwin was still undergoing treatment with Dr. Allmon. The original plan had required such testing every 60 days. Reducing the testing to twice a year was not unreasonable. Mr. Baldwin had a history of substance abuse for which he underwent treatment. Continued monitoring was certainly a reasonable condition. Dr. Brown also had recommended the twice-yearly testing at the direction of Ms. Baldwin. The trial court did not abuse its discretion by ordering the continued testing.

The inspections of the house and computers for pornography or other evidence of deviant behavior also was well supported by the evidence. Mr. Baldwin had a history of using pornography and also had drilled holes in a bathroom door in order to watch his older daughter¹ when she was naked. It was totally understandable that the court would prohibit him from possessing and viewing pornography. Allowing checks of the house and computer would discourage those activities. It also would ensure that Mr. Baldwin was no longer attempting to watch naked children. These conditions were eminently reasonable and were not an abuse of the trial court's discretion.

Mr. Baldwin also challenges the condition, beginning in month five of the phased-

¹ She is not a subject of this parenting plan.

in visitation, that he advise Ms. Baldwin in advance who the children were going to see while with him, and that he provide contact information after the visit for any people who did have contact with the children.² Clerk's Papers (CP) 203 (¶ 3.1.6). The purpose of this provision is not clear in the record because Mr. Baldwin did not object at the time it was proposed and the trial court did not therefore have to explain its reasoning. Ms. Baldwin's counsel seemed to suggest that the purpose was to ensure that Mr. Baldwin spent his time with the children rather than talking with other visitors. Report of Proceedings 17. The contact information required by the provision also suggests that the purpose might be to allow the mother to confirm with other visitors that Mr. Baldwin was behaving appropriately with the children. Contrary to Mr. Baldwin's argument, nothing in the provision allowed Ms. Baldwin to veto other guests in Mr. Baldwin's home. Given the lack of contemporaneous challenge, we cannot find that this provision amounts to an abuse of the trial court's discretion.

Mr. Baldwin also disputes whether the children's therapist should have been authorized to informally check the children for sexual abuse at his expense during the first four months of the transition period.³ CP 202-203 (¶ 3.1.2). Presumably that period

² No other visitors were allowed during visitation periods during the first four months. CP 202 (¶ 3.1.1).

³ Ms. Baldwin could pay for that same service after the first four months of visitation.

has long since passed and this issue is moot. Nonetheless, we see no abuse of discretion here. Mr. Baldwin had allegedly physically abused his oldest daughter and had admittedly drilled holes to watch her naked in the bathroom. The trial court could appropriately seek to confirm that no similar problems arose with the two younger children and use their therapist, a neutral person whom they trusted, for that purpose. The provision was valid.

Mr. Baldwin also complains about having to report his attendance at support group meetings. Both Dr. Allmon and Dr. Brown recommended that he permanently abstain from drugs and pornography. Attending the support groups and providing proof of that activity furthers Mr. Baldwin's rehabilitation. This provision is well grounded in the facts of this case and the opinions of the experts. There certainly was no abuse of discretion in this condition.

The challenged conditions were all based on tenable reasons. There was no abuse of discretion in entering them.

Judicial Bias. Mr. Baldwin also argues that the trial judge was biased against him as shown by the above-challenged rulings. He has presented no evidence to support his claim.

A party alleging bias must provide evidence of actual or potential bias. *State v.*

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Post, 118 Wn.2d 596, 618-619, 826 P.2d 172, 837 P.2d 599 (1992). Appellate courts apply an objective test, viewing the evidence as would a reasonable person familiar with all of the facts, to determine if there is the appearance of bias. *In re Marriage of Davison*, 112 Wn. App. 251, 257, 48 P.3d 358 (2002). In the absence of evidence, the claim of bias must be rejected. *Post*, 118 Wn.2d at 619.

Mr. Baldwin presents no evidence of actual or potential bias by the trial court. Indeed, the revised parenting plan entered by the court after the matter was raised by Mr. Baldwin largely follows his request. The court followed the phased-in transition he requested. The fact that the court added conditions Mr. Baldwin did not request does not mean that it was biased against him. Indeed, the fact that the court even entertained his request to revise the original parenting plan a mere three months after it was entered showed that the court took Mr. Baldwin's request quite seriously and impartially.

The record reflects no evidence whatsoever of bias.

Attorney Fees. Ms. Baldwin requested attorney fees for defending this appeal. However, she did not submit a financial affidavit 10 days before argument as required by RAP 18.1(c). Accordingly, we deny her request for attorney fees. She is, however, the prevailing party in this action and is entitled to her costs. RAP 14.1; RAP 14.2.

Affirmed.

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A majority of the panel has determined this opinion will not be printed in the

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Washington Appellate Reports, but it will be filed for public record pursuant to
RCW 2.06.040.

Korsmo, J.

WE CONCUR:

Schultheis, C.J.

Sweeney, J.